

Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

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CASE AND COMMENT

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Peonage.

An inquiry by a Federal grand jury of Alabama into alleged violations of the statutes against peonage was the occasion of an elaborate opinion by Judge Jones, of the district court, in response to questions propounded by the grand jury, in which he traced the history of the laws on the subject, defined the meaning of the word "peonage," and held that the state statutes under which a person could be subjected to imprisonment for mere breach of a private contract not only violated various provisions of the state and Federal Constitutions, but created a system of peonage in violation of the Federal statutes. *Peonage Cases*, 123 Fed. 671.

Peonage means, as the court defines it, a system of compulsory labor or service in discharge of contracts, debts, or obligations. While the law of Congress on the subject was enacted in 1867, and was aimed more specifically at the condition of peonage then existing in the territory of New Mexico, which had derived the institution from Mexico and through Mexico from Spain, the terms of the act are held to be so clear and

comprehensive as to reach any system of this kind anywhere in the United States. The terms of the act prohibit such system in the territory of New Mexico or "in any other territory or state of the United States."

A late opinion of Judge Speer, of the United States district court in Georgia, sustains the constitutionality of the act of Congress on this subject by virtue of the 13th Amendment, and holds that the statute applies to a case of illegal sale, holding in imprisonment, and labor of a citizen to work out a debt or contract.

Outside of the questions of strict law, Judge Speer refers to the "degrading and un-American effect of involuntary servitude upon every concern of a self-respecting people." He asks: "How can the plain farmer or manufacturer of turpentine or lumber, who labors for himself, with the assistance of his sons or hired help, hope for fair play in the market when a huge sawmill in the vicinity, or an unscrupulous planter wit' a stockade full of unpaid hands, can underbid his prices?" He adds that, if conditions like those described in the indictments shall continue, the negro will not remain the sole victim of peonage. He says: "Crime is ever progressive, . . . and cases are already reported where white men have been made in this way the victims of powerful and unscrupulous neighbors." In the Alabama case, J. V. Jones said to the grand jury: "While it is a source of much regret that these laws have been violated in two localities, involving about a score of offenders, yet it must nevertheless be a pleasing reflection that the abhorrence of our people for such offenses, and the sustaining

power of a just public opinion in this state, will lighten your labors in the effort to probe this evil to the core."

Is It a Retreat?

In *Fargo v. Hart*, decided March 21, 1904, Adv. S. U. S. 1903, p. 498, the Supreme Court of the United States, recognizing the general principle that a state cannot tax property outside of its jurisdiction belonging to a foreign corporation, although in taxing property within its jurisdiction, it may, if such property is a part of an organic whole used only in connection with an entire system that overruns the state limits, take the rest of the unified property into account to determine what is the value of the part within the state in proportion to the whole, and admitting that such principle, well established as it is, with respect of railroads and telegraph lines, has been extended to express companies which have no lines of material property crossing the surface of the earth, nevertheless holds that personal property belonging to a foreign express company, and located outside the taxing state, shown to constitute no part of the organic whole, so called, cannot be taken into consideration in fixing the value for taxation of the property within the state, on the theory that its possession gives the assessed company a credit necessary to enable it to do business, when the result is an assessment greatly exceeding the difference between the value of the tangible assets and the total stock of the company.

In thus deciding the court has paused in its progress along the path entered when it decided the Express Company Cases (*American Exp. Co. v. Indiana*, 165 U. S. 255, 41 L. ed. 707, 17 Sup. Ct. Rep. 991; *Adams Exp. Co. v. Ohio*, State Auditor, 165 U. S. 194, 41 L. ed. 683, 17 Sup. Ct. Rep. 305, 166 U. S. 185, 41 L. ed. 965, 17 Sup. Ct. Rep. 604; and *Adams Exp. Co. v. Kentucky*, 166 U. S. 171, 41 L. ed. 960, 17 Sup. Ct. Rep. 527). A halt has been called, if not a retreat sounded, with—as was to be expected—the Chief Justice and Mr. Justice Brewer, who led the majority in the former decisions, now in dissent.

Each of the express companies named is, in Ohio, Indiana, and Kentucky, a foreign organization. Each is engaged in interstate

and international commerce. Neither is taxable upon such commerce, nor for the privilege of carrying it on, by any of these states. Each may be taxed by all three states, upon the property within their borders which it owns, notwithstanding it is employed in interstate and foreign commerce. Each, too, may be taxed upon such business as it does in any one of these states, by that state, when such business is begun, continued, and ended upon its own soil. And doubtless, also, each of these companies may be denied the privilege of opening offices, establishing places of business, and acquiring real property within any one of these states notwithstanding the nature of its business; or may be granted such privilege in consideration of the payment of state taxes annually,—either a fixed sum, or one computed according to some selected formula. The three states, however, have elected to impose upon the foreign express companies that do business within their boundaries a simple property tax upon the property, tangible and intangible, which they may own and use within the state; and, for the purpose of ascertaining and assessing that property, they have established an elaborate system of valuation and assessment by officials specially designated for that duty. In the case of a railroad or a telegraph line running through or into a state, the rails, sleepers, roadbed, right of way, etc. of the one, or the poles and wires of the other, *qua* materials only, have an insignificant value compared with their worth as a part of a unified system and as measured by their earning power as an integral part of that system. And, as manifestly such value inheres substantially equally in every part of the line, it is fair and just to assess a railroad or a telegraph upon the mileage basis. But express companies have no such property. They have isolated, independent groups of property which may be wholly disintegrated and yet be as valuable as before. The horses and wagons of an express company may be set to work on a farm and lose none of their value. The safes and office furniture will be worth just as much in any business office as they are to an express company. Yet the business of an express company, like that of a railroad or telegraph line stretches from point to point all over the state, and brings to its owners enormous returns by the use of horses,

wagons, safes, etc., of comparatively trifling value. Naturally the states deem themselves entitled to tax that business commensurately with the protection they afford it, and to do so the device adopted by Ohio, Indiana, and Kentucky is to assume that, besides their horses, wagons, safes, etc., the companies in some vague way have within the state other intangible property,—good will, capital (invisible assets of some sort—it matters not what)—that can be reached and taxed. The Supreme Court, in the decisions mentioned, by a bare majority, in the face of an uncommonly strong dissent, sustained the taxes imposed on this theory, and adhered to its position in spite of what appears to have been an unanswerable argument by the counsel for the companies upon the application for a rehearing. The writer, in concluding a note on the Taxation of Capital Stock of Corporations in the United States (State Bd. of Equalization *v.* People, 58 L. R. A. 513), intimated that the decisions went too far and logically justified the taxation of property beyond the state lines. He said: "The Express Company Cases in Ohio and its sister states, Indiana and Kentucky, are *sui generis*. The Nichols law of Ohio does not impose a franchise, but a property tax. Professedly, it merely taxes property within the state. Professedly, too, the franchise of a foreign express company is not taxed. Actually, however, such a company has to pay upon an assessed valuation of its property in Ohio far and away beyond the real worth of everything it owns in the state that can be seen and handled, or that can be calculated from written evidences like mortgages, bonds, and bills receivable. Such a tax, no matter how skilfully it is masked, amounts to the taxation of everything that enters into the market value of the shares of capital stock,—franchises and good will not less than horses and wagons. Under this system, assessors do not merely overvalue property within their jurisdiction; they reach out and grasp elements beyond it, and impute these to the ostensible subjects of their assessments."

The latest decision does not certainly overrule the prior decisions, but it does decline to follow them to their logical end. It is to be hoped that, in addition to this, the court is disposed to re-examine the questions, and endeavor to find a more satisfactory resting place.

Malignant Cartoons.

The noble tribute paid in the United States Senate by Senator Scott to the memory of Senator Hanna briefly refers to the meanness and malignity of political misrepresentation and abuse.

All can remember the cartoons of a few years ago which depicted Senator Hanna as a huge, heartless monster, dressed in a suit covered with dollar marks, as he stood trampling on and crushing the prostrate forms of women and children, heedless of their agony if it might add to his wealth. In the whole history of shameless political abuse it is doubtful if anything had ever before been seen so cruel and brutal. To many of his political opponents, and even to many of his own party, Mark Hanna was known chiefly by these cartoons, and no doubt millions of people at the time believed him to be something like the fiend which they depicted. In the years since that the whole nation has come to know him as a large-hearted man, full of human sympathies, and the especial friend of laboring men. Out of the indescribable storm of malignity he finally emerged, and all men learned at last how false and infamous these cartoons had been. While he seemed unmoved by these vicious and persistent misrepresentations, Senator Scott tells that in private Senator Hanna, looking at one of these cartoons, said, with tears coursing down his cheeks: "That hurts. When I have tried all my life to put myself in the other fellow's place; when I have tried to help those in need and to lighten the burdens of those less fortunate than myself, to be pictured as I am here; to be held up to the gaze of the world as a murderer of women and children; I tell you it hurts."

Great latitude may well be allowed in the use of cartoons, as well as in the discussion of all public questions. On all public matters every point of view may properly be presented. Something may be allowed for overstatement and unfairness of presentation during the heat of a contest. But absolute misrepresentation, deliberate, dishonest, and malignant, ought to be regarded, not as a wrong to the individual victim simply, but as a greater wrong to the public. If a public man subjected to such misrepresentation cannot wisely take notice of it, or has no adequate remedy, the wrong to the pub-

lic is of sufficient importance to require the public officials, without any private complaint or suggestion, to prosecute and punish the offender. A public prosecutor might render great service if, without any political motive or bias, he would impartially prosecute every conspicuous and aggravated case of criminal libel. It would help to clarify public sentiment, and give needed emphasis to the truth that our law does not justify malicious and malignant misrepresentation to ruin a man's reputation, even for political purposes.

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Malice as Ground of Civil Action.

"An act which does not amount to a legal injury cannot be actionable because it was done with a bad intent." "One has the right to do a lawful act, however ill the motive may be." Expressions like these have been made by the courts in instances unnumbered. They are clearly intended to mean that the element of malice cannot make actionable what would otherwise not be. If they do not mean this, they are misleading. If they do mean this, they are untrue. But it cannot be doubted that the meaning intended, as well as that which will inevitably be understood from the use of such language, is that the element of malice added to a transaction cannot make it amount to a legal injury, if it would not be so without the malice. Very little reflection shows that this misrepresents the law in a variety of instances. That malice is an essential ingredient, not only of some criminal actions, but of some torts, is elementary law. That a malicious prosecution necessarily involves the element of malice is an obvious illustration. Therefore, sweeping statements that malice cannot make what would otherwise not be so amount to a legal injury are, at the least, subject to exception.

The truth, indeed, is that the question whether an act which injures another is rendered actionable solely by reason of the fact that it was done maliciously has been one of the most troublesome questions that the courts have been called to pass upon, and has been subject to various conflicting decisions.

The subject has been recently considered

in *Passaic Print Works v. Ely & W. Dry-Goods Co.* 62 L. R. A. 673, and in *State ex rel. Durner v. Huegin*, 62 L. R. A. 700. In the former case it was held that a merchant does not subject himself to liability to an action for damages by sending a circular to the retail trade, offering to sell, at a cut price, a small quantity of a manufacturer's product, for the purpose of injuring and destroying his trade and depressing the price of his goods on the market; but in the latter case an agreement between several independent newspaper publishers to compel a fourth person, engaged in like business, either to reduce his rates for advertising, or lose customers, was held to constitute a malicious conspiracy to injure such publisher's business, and to be indictable as such.

The exhaustive annotation accompanying these cases reviews the decisions bearing on the subject, and, out of their chaotic condition, evolves the rule that one's motive in exercising an absolute right cannot be questioned; but that, where the right is correlative, it must be exercised with due regard to like rights of others; and hence, one who exercises such a right for the sole purpose of injuring another is liable for the damage inflicted. The malice must be what has been denominated as "unmixed malice"—that is, it must be the sole and exclusive motive that actuated the person committing the act complained of. If he receives any benefit from the exercise of the right other than the gratification of his malicious desires, he is not liable for the resulting damage. There is a third class of cases, in which the offending person is not engaged in the exercise of a right. Such conduct is clearly actionable. The only trouble in such cases is in determining to which class the particular case belongs. These general principles having been settled, the only question to determine in each case is whether or not the right which the defendant was maliciously exercising, if he was exercising one, was, indeed, an absolute, and not a correlative, right.

It is this branch of the subject that presents the greatest conflict of judicial authority. The proper determination of each case requires close discernment for the purpose of discovering the particular right involved, and then a consideration of the law relating to that right.

This is illustrated by the cases involving the liability of an employer to a third person for injury to trade, caused by the employer threatening to discharge his workmen if they continued to trade with such person. In these cases conflicting results have been reached. In *Robison v. Texas Pine Land Asso.* (Tex. Civ. App.) 40 S. W. 843, the employer was relieved from liability where he acted for the purpose of securing the trade for himself. In this case the employer was plainly exercising a right to build up his own trade, and the decision was correct. But in *Payne v. Western & A. R. Co.* 13 Lea, 507, 49 Am. Rep. 666, the court relieved it from liability on the ground that it had the right to discharge its employees. The error in this lies in the court's having attributed to the defendant the exercise of a right which he did not in fact exercise. The decision would have been correct if the defendant had exercised its right to discharge its employees, and, as a result of its so doing, a third person had lost their trade, even though it discharged them for the sole malicious purpose of injuring such third person. But it did not exercise that right. It merely used the potential power to exercise it as a means of depriving the plaintiff of the trade, so that the real act was that of preventing the employees from trading with the plaintiff. This was evidently the view the court took of the matter in *Graham v. St. Charles Street R. Co.* (La.) 27 L. R. A. 416, where, in a similar case, it held the employer liable upon the ground that the intentional causing of loss to another, without justifiable cause and with malicious purpose, is, of itself, a wrong.

It also appears from the annotation that, under the necessities of modern civilization, the number of absolute rights is gradually lessening. This is evidenced by the recent decision in *Barclay v. Abraham* (Iowa) 96 N. W. 1080, where it was held that the defendant, who put down a well with the malicious intention of cutting off the percolating supply of the well of another, was liable to a third person whose well was injured. The value of this decision lies in the fact that, under the common law, one has generally been considered to have an absolute right to do as he pleases with the water percolating through his land; but the court, in referring to this common-law rule, said that

there existed a tendency to depart from the strict rules of the common law with respect to percolating waters, and that the rights of the landowner are not absolute, but correlative.

From the standpoint of reason, it seems right that the courts should regard malice as an important element in questions of tort. In the greater wrongs, which constitute crimes, malice is often the element of chief importance. If "malice aforethought" is to be considered a chief factor in a capital crime, what reason can there be why in the lesser wrongs, for which the only remedy is by civil actions, the element of malice should not be taken into account? Indeed, in a variety of cases this has always been done, as in cases of malicious prosecution, the malice that authorizes punitive damages, that which defeats a claim of privilege in libel, and in various other instances. It is equally false to say that malice will always make an act unlawful. The difficulty is to find a rule by which to determine when this will, and when it will not, be so. The rules stated above seem to be as definite as any that can yet be formulated.

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IN
LAWYERS' REPORTS, ANNOTATED.

Book 63, Part 1.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

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Among the New Decisions.

Action.

The right of a taxpayer of a county to bring a suit in his own name on behalf of the public to compel restoration to the treasury of money illegally appropriated as fees by a county officer with the consent of the board of commissioners is sustained in *Zuelly v. Casper* (Ind.) 63 L. R. A. 133, where the board refuses to bring the action.

Appeal.

A Federal question first raised in a petition for rehearing in the highest state court is held, in *Mutual L. Ins. Co. v. McGrew* (U. S.) 63 L. R. A. 33, to be raised too late

to confer jurisdiction upon the Supreme Court of the United States, where such petition was denied without opinion.

Bankruptcy.

A judgment for damages for criminal conversation is held in *Tinker v. Colwell*, Advance Sheets U. S. 1903, p. 505, to be one recovered in an action "for wilful and malicious injuries to the person or property of another," within the meaning of the provision of the bankruptcy act of July 1, 1898, excepting judgments recovered in such actions from the operation of a discharge in bankruptcy.

Banks.

See CORPORATIONS.

Boundaries.

Where the boundaries of fractional lots appear by the government plat to abut on a body of water which in fact never existed at substantially the place indicated on the plat, it is held, in *Security Land & E. Co. v. Burns* (Minn.) 63 L. R. A. 157, that the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey, and be held to be the boundary line of the land it delimits, although as a general rule a meander line is not a boundary line.

Carriers.

A promise by a conductor to assist a female passenger who is partially blind, in alighting from the train at her destination, is held, in *Southern R. Co. v. Hobbs* (Ga.) 63 L. R. A. 68, not to amount to an undertaking on the part of the conductor to enter the car in which the passenger is riding, assume charge of her bundles, and escort her from her seat down the aisle and out upon the platform, unless the passenger is so helpless as to require this extraordinary attention, and the conductor has notice that such is the case.

The mere fact that a train is run by a railroad company at the solicitation of a

newspaper publisher, who agrees that the daily revenue shall amount to a certain sum in consideration that he have the exclusive right to use it for the transportation of papers, is held, in *Memphis News Pub. Co. v. Southern R. Co.* (Tenn.) 63 L. R. A. 150, not to make it a chartered train, so as to enable the carrier to exclude other publishers from its use, where it is placed on the regular schedule of the road, and advertised to carry persons and property generally the same as other trains.

A stipulation in a railway pass that the company shall not be liable to the user "under any circumstances, whether of negligence of agents or otherwise, for any injury to the person," is held, in *Northern P. R. Co. v. Adams*, Advance Sheets U. S. 1903, p. 408, to violate no rule of public policy, and to relieve the company from liability for personal injuries resulting from the ordinary negligence of its employees to one riding on the pass with knowledge of its conditions.

A stipulation in a free railway pass requiring the user to assume the risk of injury due to the carrier's negligence is held, in *Boering v. Chesapeake Beach R. Co.* Advance Sheets U. S. 1903, p. 515, to be binding on a person accepting the privilege, although notice of such stipulation may not have been brought home to her.

Commerce.

A combination by stockholders in two competing interstate railway companies to form a stockholding corporation which should acquire, in exchange for its own capital stock, a controlling interest in the capital stock of each of such railway companies, is held, in *Northern Securities Co. v. United States*, Advance Sheets U. S. 1903, p. 436, to violate the anti-trust act of July 2, 1890, which declares illegal every combination or conspiracy in restraint of interstate commerce, and forbids attempts to monopolize such commerce or any part of it.

A combination prohibited by the act of Congress of July 2, 1890, is held, in *W. W. Montague & Co. v. Lowry* (C. C. A. 9th C.) 63 L. R. A. 58, Affirmed in Advance Sheets U. S. 1903, p. 307, to be constituted by an association to unite all "acceptable dealers" engaged in a certain business in a certain city and within 200 miles therefrom, and all

American manufacturers of their supplies, the rules of which exclude unacceptable persons from membership, and prohibit their purchasing supplies at less than list prices, which are more than double what members of the association pay.

Constitutional Law.

A statute forbidding keepers of saloons to permit women to enter them for the purpose of being supplied with liquor is held, in *Adams v. Cronin* (Colo.) 63 L. R. A. 61, to be valid.

A statute establishing free employment agencies to be maintained at public expense, which forbids those in charge of them to furnish help to persons whose employees are on a strike, or to permit them to have access to the names of applicants for service, while expressly entitling other employers to their services, is held, in *Mathews v. People* (Ill.) 63 L. R. A. 73, to be void.

The constitutional requirements of equality and uniformity of taxation are held, in *State ex rel. Lewis v. Smith* (Ind.) 63 L. R. A. 116, not to be infringed by a statute permitting mortgage indebtedness to the extent of \$700 to be deducted from the assessed value of real estate.

The exemption of honorably discharged soldiers of the Rebellion, citizens of the state, from the provisions of a statute requiring peddlers to pay a license tax, is held, in *State v. Shadro* (Vt.) 63 L. R. A. 179, to be a denial of the equal protection of the laws.

The constitutional guaranty of religious freedom is held, in *People v. Pierson* (N. Y.) 63 L. R. A. 187, not to be violated by a statute requiring the furnishing of medical attendance to minors, where the Constitution provides that liberty of conscience shall not justify practices inconsistent with the safety of the state.

The stamp tax on a memorandum or contract of sale of a certificate of stock imposed by the act of Congress of June 13, 1898, is held, in *Thomas v. United States*, Advance Sheets U. S. 1903, p. 305, not to be unconstitutional as a direct tax on property which, under U. S. Const. art. 1, § 2, clause 3, must be apportioned according to the census to fall within the class of duties, imposts, and excises, which, by § 8, clause

1, of that article are required to be uniform throughout the United States.

The prohibition by the tea inspection act of March 2, 1897, on considerations of public policy, of the importation of teas inferior to the government standards, is held, in *Buttfield v. Stranahan*, Advance Sheets U. S. 1903, p. 349, not to constitute a deprivation of the property of the importer without due process of law, on the theory that he has a vested right to trade with foreign nations.

Corporations.

See also LIMITATION OF ACTIONS; TAXES.

A transfer of bank stock on the books of the bank in favor of a pledgee, which held it as collateral security, is held, in *Brunswick Terminal Co. v. National Bank*, Advance Sheets, U. S. 1903, p. 314, not to render such pledgee liable as a stockholder for the bank's indebtedness created after the stock has been retransferred on the books of the pledgee upon payment of the loan, notwithstanding the pledgee's failure to give notice of the retransfer, which, under Ga. Code 1882, § 1490, is requisite to exempt from an existing individual liability as a stockholder under a corporate charter, where the stockholder's individual liability under the charter of the bank in question is limited to the par value of his stock "at the time the debt was created."

Criminal Law.

Jurisdiction to impose sentence upon one convicted of crime is held, in *People ex rel. Boenert v. Barrett* (Ill.) 63 L. R. A. 82, to be lost by permitting him to go at large upon his own recognition pending a motion for new trial, and taking no further action in the case until after the expiration of several terms of court.

Evidence.

Incapability of the life tenant of a settlement in trust for the benefit of a woman and her children to bear children is held, in *Ricards v. Safe Deposit & T. Co. (Md.)* 63 L. R. A. 145, not to be provable by expert

medical testimony for the purpose of enabling the settlor and life beneficiary to terminate the trust and cut off the children's contingent interests.

The admissibility of documentary evidence tending to establish the guilt of an accused of the offense charged is held, in *Adams v. New York*, Advance Sheets, U. S. 1903, p. 372, not to be affected by the fact that it was secured in violation of the constitutional prohibition against unreasonable searches and seizures.

Executors and Administrators.

A brother of an intestate, who is not made a party to an accounting by the administrator, is held, in *Re Killan v. O'Reilly* (N. Y.) 63 L. R. A. 95, to have the right to treat the proceedings in which the accounting was had as void, and institute new proceedings to compel an accounting, without the necessity of coming in under the prior one by motion to open that decree.

Gas.

Any contract exemption from state regulation of the price of gas, contained in the charter of a gas company, is held, in *People's Gaslight & Coke Co. v. Chicago*, Advance Sheets U. S. 1903, p. 520, not to extend to the plants of, and territory occupied by, certain other gas companies not possessing such immunity in their own right, when absorbed by the former company under the general power of consolidation and merger conferred upon gas companies by the Illinois act of June 5, 1897, which provides that the consolidated corporation shall be subject to the legal obligations of the companies absorbed.

Handwriting.

See WITNESSES.

Husband and Wife.

A marriage contract procured by fraudulent representations by the woman that during the man's absence from the state she

had given birth to a child of which he was the father, and which she purports to exhibit to him, no such child ever having been born, is held, in *Di Lorenzo v. Di Lorenzo* (N. Y.) 63 L. R. A. 92, to be properly annulled by the court, where the law regards marriage as a civil contract, and the statute provides that it may be annulled when the consent of one of the parties is procured by fraud.

License.

See CONSTITUTIONAL LAW.

Limitation of Actions.

The statute of limitations is held, in *West v. Topeka Sav. Bank* (Kan.) 63 L. R. A. 137, to begin to run at once on a stockholder's subscription to its capital stock to be paid at intervals upon the call of the board of directors, when the corporation becomes insolvent and suspends active business, or when it closes its doors and ceases all its usual and ordinary business leaving debts unpaid, although no call has been made upon the stockholders.

Master and Servant.

A workman employed in a wool-combing factory, who contracts the disease of anthrax by contact with anthrax bacillus which is present in the wool, is held, in *Higgins v. Campbell* [1904] 1 K. B. 328, to have sustained an "injury by an accident" arising out of and in the course of his employment, within the meaning of the workman's compensation act of 1897.

Monopolies.

See COMMERCE.

Patents.

See TAXES.

Rates.

See GAS.

Religious Freedom.

See CONSTITUTIONAL LAW.

Taxes.

See also CONSTITUTIONAL LAW.

That practically the whole capital of a corporation is represented by patent rights which are not subject to taxation is held, in *People ex rel. United States Aluminum Printing Plate Co. v. Knight* (N. Y.) 63 L. R. A. 87, not to prevent the assessment against it of a franchise tax regulated by the amount of the capital which is employed within the state.

Personal property owned by a nonresident express company and situated outside the state is held, in *Fargo v. Hart, Advance Sheets U. S. 1903*, p. 498, not to be properly taken into account in fixing the value for taxation of its property within the state on a mileage basis, on the theory that it gave the credit necessary for carrying on the business in the state, where the resulting assessment is greatly in excess of the value of the total good will of the company measured by the difference between its tangible assets and the total value of its stock.

Veterans.

See CONSTITUTIONAL LAW.

Witnesses.

The right to cross-examine handwriting experts in order to prove their ability is sustained in *Hoag v. Wright* (N. Y.) 63 L. R. A. 163, and it is held to be error to strike out an admission by such an expert that he had been mistaken as to signatures which he had pronounced genuine, although the trial judge might, in his discretion, have excluded an effort to secure such admission in the first instance.

The right to interrogate a witness as to his belief in a Supreme Being who would punish him for false swearing, for the purpose of affecting his credibility, is denied in *Brink v. Stratton* (N. Y.) 63 L. R. A. 182, where the Constitution provides that no person shall be incompetent to be a witness on account of his religious belief, and

abrogates all disqualification from civil rights because of such belief.

Women.

See CONSTITUTIONAL LAW.

New Books.

"The Office Boy's Digest." Cullings from the American, English, and Canadian Courts, Selected and Compiled by the Office Boy. With an Introduction by B. A. Milburn. The Michie Company, Charlottesville, Va. 1 Vol. \$1.50.

Many of the compilations of so-called legal humor are rather dreary, but the Office Boy's Digest, which is made up of humorous excerpts from opinions and classified by subjects, contains many specimens of real humor. These legal excerpts are not all excruciatingly funny, but the office boy has in general shown a capacity to see the humorous side of a legal utterance.

"A Digest of Cases Determined in the Supreme Court of Canada." From 1875 to 1903. By Louis William Couture. 1 Vol. \$12.50.

"A Compilation of Practical Forms." Adapted to the Laws of Wisconsin. By Edwin E. Bryant. 1 Vol. \$4.50.

"Street Railroad Accident Law." By Andrew J. Nellis. 1 Vol. \$6.

"Forty Centuries of Ink." The most famous Chemico-Legal Ink Cases together with the Law and Latest Decisions. By David N. Carvalho. 1 Vol. \$3.50.

"Civil Procedure in Tennessee." General Provisions of the Code, Parties, Actions, Venue, Cost Bonds, Summons, Pleading and Practice. By Noble Smithson. 1 Vol. \$10.

"The Code of Hammurabi." King of Babylon about 2250 B. C. In Two Parts. Part I. by Robert Francis Harper. \$4. Second edition now ready. Part II. by William Rainey Harper. \$2. In preparation.

"American Railroad Law." By Simeon E. Baldwin. 1 Vol. \$6.

In this entirely new work is to be found a compact statement of railroad law as established in this country. It is the outcome of a long experience in railroad cases, the author, before his election to the bench of the Supreme Court, having been general

counsel of several railroad companies. He has also taught the subject of railroad law in the Yale Law School for twenty years.

"The Law of Fixtures." By Harrison A. Bronson. 1 Vol. \$5.

The only modern book on a subject which has undergone many changes in the last ten years. It exhausts the cases, and includes an addenda specifically treating of mining fixtures. 1 Vol. \$5.

"Street Railway Accident Law." By Elery H. Clark. 2d and enlarged edition. 1 Vol. \$5.

A thorough and systematic treatise covering liability for accidents to passengers, employees, travelers on the highways. This work is the result of a page by page examination of every volume of American reports, and is absolutely exhaustive.

Recent Articles in Law Journals and Reviews.

"Does the Indiscriminate Sale of the Score and Libretto of a Foreign Opera in Which the Composer Reserves to Himself All Rights of Concert Reproduction Have the Effect of Dedicating It to the Public?"—58 Central Law Journal, 221.

"Limitations of the Rule Requiring Travelers and Others to Stop, Look, and Listen before Attempting to Cross Railroad Tracks, as Sought to be Applied to Urban Street Railways."—58 Central Law Journal, 222.

"Whether a Consideration is Necessary to a Waiver."—58 Central Law Journal, 264.

"Alexander Hamilton—Henry D. Estabrook's Address on 'The Lawyer Hamilton'—(Continued)."—28 National Corporation Reporter, 171, 172, 176, 177.

"Unauthorized Corporation Business—Stockholders' Non-Liability."—28 National Corporation Reporter, 180.

"The Law of Bank Checks—Practical Series."—21 Banking Law Journal, 151.

"The Justice of the Peace."—1 North Carolina Journal of Law, 157.

"New Trial and Venire Facias De Novo: A Distinction."—1 North Carolina Journal of Law, 171.

"The Illinois Parole Law."—36 Chicago Legal News, 267.

"The 'Affecting' of Contracts by Statute."—116 Law Times, 470.

"The Electoral Commission of 1877."—38 American Law Review, 161.

"National Supervision of Insurance, and Paul v. Virginia."—38 American Law Review, 181.

"Is Congress a Conservator of the Public Morals (Regulation of Commerce)?"—38 American Law Review, 194.

"Japanese Law and Jurisprudence."—38 American Law Review, 209.

"The Civil Law."—38 American Law Review, 220.

"A Proposed National Incorporation Law."—2 Michigan Law Review, 501.

"The French Jury System."—2 Michigan Law Review, 597.

"The Physician as an Expert—Part I."—2 Michigan Law Review, 601.

"Forged Transfers of Stock, and the Sheffield Case."—17 Harvard Law Review, 373.

"The Hawaiian Case."—17 Harvard Law Review, 386.

"Recent Progress towards Agreement on Rules to Prevent a Conflict of Laws."—17 Harvard Law Review, 400.

"Gratuitous and Compensated Deposits."—58 Central Law Journal, 306.

"Recent Foreign Copyright Law."—116 Law Times, 516.

"Whether an Attempt to Bribe an Officer Who is without Authority to Act is a Criminal Offense."—58 Central Law Journal, 58.

"Extraterritorial Powers of Receivers: Rights of Action in Foreign Courts."—58 Central Law Journal, 284.

"The Danger from Small-Pox Hospitals."—68 Justice of the Peace, 157.

"The Criminal Liability of Publicans for the Acts of Servants."—68 Justice of the Peace, 159.

"Ultra Vires and Estoppel,"—44 Legal Adviser, 53.

"Resuer Imperiling His Own Life not Guilty of Contributory Negligence."—36 Chicago Legal News, 285.

"Contingent Remainders and the Perpetuity Rule."—23 Law Notes (Eng.), 118.

"Natural-Born Citizens of the United States—Eligibility for the Office of President."—66 Albany Law Journal, 99.

"Alexander Hamilton—Henry D. Estabrook's Address on 'The Lawyer Hamilton—(Conclusion).'"—28 National Corporation Reporter, 240, 245.

"The Evolution of the Fourteenth Amendment (Concluded)."—12 American Lawyer, 108.

"The Use and Abuse of Expert Evidence."—12 American Lawyer, 118.

"Negligence of Railway Companies in Canada."—40 Canada Law Journal, 215.

"The Modern Law of Charities as Derived from the Statute of Charitable Uses."—52 American Law Register, 201.

"Russian Civil Law—Part II."—52 American Law Register, 213.

"Early American Marriage Laws."—3 Canadian Law Review, 133.

"The Right of an Adult Child to Recover for Services Rendered to a Parent."—3 Canadian Law Review, 166.

"Observation on the Art of Advocacy."—3 Canadian Law Review, 171.

"Statutory Estates in Place of an Estate Tail."—13 Yale Law Journal, 267.

"The Doctrine of Continuous Voyages."—13 Yale Law Journal, 289.

"Proposed Reforms in Marriage and Divorce Laws."—4 Columbia Law Review, 243.

"Codification of the Doctrine of Rescission."—4 Columbia Law Review, 264.

"The Peonage Cases."—4 Columbia Law Review, 279.

"The Chief Constable and His Control over the Police."—68 Justice of the Peace, 181.

"Justices Equally Divided in Opinion."—68 Justice of the Peace, 182.

"Property in Dogs."—40 Canada Law Journal, 251.

"Liability of Municipality for Failure of Its Officers to Enforce Ordinances."—40 Canada Law Journal, 253.

"The Relation of Judges to Grand Juries."—40 Canada Law Journal, 255.

"Forcible Entry by Landlord without Process of Law."—27 New Jersey Law Journal, 102.

"Validity of Agreement Founded on a New Consideration, but Given in Payment of an Illegal Contract."—58 Central Law Journal, 321.

"Inter-Insurance—Its Legal Aspects and Business Possibilities."—58 Central Law Journal, 323.

"Sunday Laws."—3 Canadian Law Review, 215.

"Concerning the Need of Creating Advocates or Defenders for the Accused."—3 Canadian Law Review, 221.

"The Expansion of the Common Law."—3 Canadian Law Review, 229.

"Covenant for Quiet Enjoyment in a Lease."—3 Canadian Law Review, 261.

"Construction of Statute Making It Criminal for Members of Congress to Sell Their Influence"—58 Central Law Journal, 341.

"Keeping Oils Forbidden by Policies of Insurance."—58 Central Law Journal, 343.

The Humorous Side.

So CONSIDERED BY THE COURT.—A transcript certified by an acting mayor in a criminal case, which is sent us by an Ohio correspondent, reads as follows: "It is thereupon on said day by me, the said mayor, adjudged and ordered that said cause was argued fully by counsel, in the course of which argument counsel for state alleged in open court that the court understood as well as he the law of the case, and in the course of argument by counsel for defendant he alleged in open court that the court knew more law than counsel on either side and more than both put together, and the same not being disputed by counsel, and there being no evidence offered to the contrary, and for the purpose of disposing of all the issues presented, the court finds from the preponderance of the evidence adduced said allegations to be true, and it is by the court so considered."

A MIXED COMPLAINT.—A Utah correspondent sends us the following complaint, on which a prosecution was based in a justice's court of that state:

State of Utah, } ss.
County of Salt Lake. }

In The Justice's Court.

..... Precinct,
Ref.

Justice of the Peace

The State of Utah
vs.
.....
.....
Defendant. } Complaint.

On this 7th day of December A. D. 1903, before me _____, Justice of the Peace, within and for _____ Precinct, Salt Lake County, State of Utah, personally appeared _____, who, on being duly sworn by me, on his oath did say that _____, _____, and _____ on the 6th day of

December, *Sunday A. D.*, 1903, at the County of Salt Lake, State of Utah, did commit the offence of breaking the lock and opening the door of Defendants House, and Entering the same and took from same, A pocket Knife valued at \$2.75 and A Modle Worth \$1000 thousand Dollars, the Defendant being an inventor of Machinery, and otherwise destroying the Property of the Defendant contrary to the provisions of the Statute of the State aforesaid, in such cases made and provided, and against the peace and dignity of the State of Utah.

his Mark X
Subscribed and sworn to before me, the
day and year first above written.

Justice of the Peace.

"GUDGMAN" ON "ISSUE GIND."—At the suggestion of a correspondent, we reprint from 7 Wend. 389, the following specimen of a justice's transcript which was read in evidence over an objection that it was not "written in the English language and in fair legible characters as required by statute:"

"Samuel Cooper vs. fretrick Browner.
This 25 day of November, 1824. Summons
redurned bersonal served in a plea of —
of fifty dullows and issue gind, and the
parties was rety for triel and witness
swearn and gudmand fur the plaintiff on a
former gudmand fur twenty six dullows
and twenty six cents. Damiges \$26.26,
cost of suit 72 \$26.98. I hereby sartify
that the alove copy is a correckt and true
copy of my pook. Guven unter my hand at
seal at Danube this 18, day of January
1825."

NOT AN ANIMAL; ONLY A GOOSE.—An opinion of Wilkes, J., of the Tennessee supreme court, holds that a goose is not an "animal or obstruction" for which the statute requires a train to signal or stop when an animal or obstruction is before it on the track. The opinion says: "It is true a goose has animal life, and in the broadest sense is an animal; but we think the statute does not require the stopping of trains to prevent running over birds, such as geese, chickens, ducks, pigeons, canaries, or other birds that may be kept for pleasure or profit. . . . The line must be drawn somewhere, and we are of the opinion that the goose is a proper bird to draw it at."

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